

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CORY A. MORTZFIELD,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 12-15270

SENIOR UNITED STATES DISTRICT JUDGE
ARTHUR J. TARNOW

MAGISTRATE JUDGE MICHAEL J. HLUCHANIUK

ORDER ADOPTING REPORT AND RECOMMENDATION [14]
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT [12] AND DENYING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT [9]

On February 19, 2014, Magistrate Judge Hluchaniuk issued a Report and Recommendation ("R&R") [14] recommending that Defendant's Motion for Summary Judgment [12] be granted and that Plaintiff's Motion for Summary Judgment [9] be denied. Plaintiff filed an Objection [15] on February 25, 2014.

For the reasons stated below, the Report and Recommendation [14] is ADOPTED and is entered as the findings and conclusions of the Court. Defendant's Motion for Summary Judgment [12] is GRANTED. Plaintiff's Motion for Summary Judgment [9] is DENIED.

STATEMENT OF FACTS

The R&R contains a detailed explanation of the factual background of this case, and the Court adopts the factual background as set out in the R&R in full.

ANALYSIS

Plaintiff raises one objection to the R&R [14]. Plaintiff argues that when an ALJ reaches the conclusion that a claimant has moderate limitations in concentration, persistence, and pace (“CPP”) independent of a medical source, the ALJ must also incorporate these limitations into his RFC assessment and hypothetical question to the vocational expert (“VE”).

In *Hicks v. Comm'r of Soc. Sec.*, No. 10–13643 (E.D. Mich. Aug. 30, 2011) (Michelson, M.J.), the court thoroughly digested the case law in this district and determined that the cases generally fall into two categories—those where a medical expert has found a moderate limitation in CPP, and those where the ALJ specifically found such a limitation, whether or not there was such a finding by a medical expert. *Id.* at *21–28, *23 n.3 (collecting cases). In the latter class of cases, in which this case falls, the ALJ must incorporate the CPP limitation, *in some way or form*, into the hypothetical questions asked of the VE. *Hicks*, No. 10–13643 at *23–24.

Boley v. Astrue, No. 11–10896 at *16 (E.D. Mich. Feb. 10, 2012) (Grand, M.J.) (emphasis added). Here, the ALJ made “a specific finding of the effect of the limitation on the claimant’s ability to work.” *Boley*, No. 11–10896 at *16, n.4. In his hypothetical to the VE, the ALJ added the requirements that Plaintiff “never climb ladders, ropes, or scaffolds . . . should avoid all use of moving machinery and all exposure to unprotected heights; and [] work would be limited to simple, routine, repetitive tasks” to his assessment that Plaintiff could perform sedentary work. The ALJ, therefore, satisfied the *Hicks* requirement that the hypothetical to the VE “in

some way or form” incorporate Plaintiff’s CPP limitation.

CONCLUSION

The Court having reviewed the record in this case, the Report and Recommendation [14] of the Magistrate Judge is hereby **ADOPTED** and is entered as the findings and conclusions of the Court.

IT IS ORDERED that Plaintiff’s Objection [15] is **OVERRULED**.

IT IS FURTHER ORDERED that Defendant’s Motion for Summary Judgment [12] is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff’s Motion for Summary Judgment [9] is **DENIED**.

SO ORDERED.

Dated: March 31, 2014

s/Arthur J. Tarnow

Arthur J. Tarnow

Senior United States District Judge